

**REMARKS**

Claims 1-52 are all the claims pending in the application.

**I. Examiner Interview Summary**

The Applicant thanks the Examiner for the telephonic interview of December 17, 2007, where the Examiner and the Applicant's Representative discussed the current rejection of claim 1 in view of Dhara et al. (US 2004/0005042) (hereinafter "Dhara"). Specifically, the Examiner and the Applicant's Representative discussed whether Dhara discloses automatically launching a messaging client of an originating device at paragraph [0023], and more specifically whether Dhara discloses the availability detector of the claimed invention. The Applicant's Representative and the Examiner did not reach an agreement on the current claims, but the Applicant has set forth additional arguments below which the Applicant believes will clarify the difference between the elements of claim 1 and the invention of Dhara.

**II. Claim Rejections – 35 U.S.C. § 102**

The Office rejected claims 1-6, 19, 21-28, 30-42, and 46-52 under 35 USC §102(e) as allegedly being unpatentable over Dhara et al. (US 2004/0005042) (hereinafter "Dhara"). The Applicant respectfully traverses the rejection for the reasons set forth below.

The Applicant submits that Dhara does not disclose the elements of claim 1, as Dhara does not teach the use of "an availability detector, for *detecting* availability of said destination device," as recited in claim 1 (emphasis added). The availability detector is able to actively determine the status of the called party, or destination device, without requiring information from the destination device itself. In contrast, Dhara only describes a situation where the called party,

or destination device, “may send an instant message to calling party cellular telephony device 102 to indicate the called party’s busy status....” Dhara requires the destination device, or called party, to send a message to the calling party, or originating device, in order to provide the calling party with the called party’s busy status. There is no “detecting” occurring in Dhara. The invention embodied in claim 1, however, uses an availability detector to *detect* the availability of the destination device, i.e. proactively determine the called party’s busy status without interacting with the destination device itself.

Furthermore, as stated in the Specification on p. 12 at para. [0036], “...the availability detector 110 uses signaling information to determine the call progress.” Dhara does not disclose or suggest the use of signaling information by an availability detector to detect the availability of the destination device, but instead is limited to sending a message from the destination device to the originating device.

The Specification further states that “the destination device may be considered unavailable (i) if a busy signal is detected, (ii) if the call is not answered after a predetermined number of rings, (iii) if the call connects to a voicemail box, or (iv) if an indication is received from the communications carrier that the destination device is offline.” *Specification*, p. 12, para. [0036], lines 8-12. Therefore, while Dhara requires the called party to send a message to the calling party to indicate a busy status, the invention set forth in claim 1 uses the availability detector to *detect* the availability of the destination device through one of the above-described options. As the claims are read in light of the specification, the Applicant submits that the

availability detector of claim 1, as viewed in light of the aforementioned sections of the Specification, is not disclosed by Dhara.

The use of the availability detector has the additional advantage over Dhara of functioning even when the call is incomplete, as described in para. [0036], line 7-8 and 12-13 of the Specification. In Dhara, an incomplete call would never provide the called party with the opportunity to send a message to indicate the unavailability of the called party, as the called party would never receive notification of the incoming call to begin with and would therefore be incapable of responding. In the automatic messaging client launcher system embodied by claim 1, however, the availability detector can detect an incomplete call and initiate the messaging client without requiring a message or signal to be sent from the called party. Therefore, the system of Dhara cannot be equated with the availability detector of claim 1.

For at least the reasons stated above, the Applicant submits that Dhara does not disclose each and every element of claim 1, and therefore requests that the rejection under 35 U.S.C. § 102(e) be withdrawn.

Additionally, as rejected claims 2-52 all recite the availability detector discussed in claim 1 above, or depend from a claim which recites the availability detector, the Applicant believes that the aforementioned rejected claims are also allowable over Dhara.

### **III. Claim Rejections – 35 U.S.C. § 103**

The Examiner also rejected claims 7-18, 20, 29, 43 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Dhara.

With regard to claim 14, the Applicant submits that Dhara does not disclose where the content of said message comprises default message content, as the message described in claim 8, from which claim 14 depends, is a message sent to the destination device. The Examiner cites to Dhara, Figure 2, ref. 218 and paras. 33-34, which instead describes a message being sent from a called party (or destination party) to the calling party (or originating party). Dhara does not, therefore, disclose sending default message content to the destination device, or called party, and therefore does not teach or suggest the elements of claim 14.

With regard to claims 7-13, 15-18, 20, 29, 43, and 45, the Applicant refers the Examiner to the arguments presented in Section II. above with regard to claim 1, and submits that the remaining rejected claims are allowable for at least the same reasons.

**IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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